

**Complaint 2005 – No. 8  
In Re McCune**

December, 2005

**DETERMINATION OF NO REASONABLE CAUSE -- ORDER OF DISMISSAL**

**I. NATURE OF THE COMPLAINT**

The Complaint alleges that Representative Jim McCune's June, 2005 legislative newsletter, prepared and mailed at public expense, violated the Ethics in Public Service Act (Act) because the newsletter insulted the opposition party, stretched the truth, and "was a political tool, barely used to actually inform."

**II. PROCEDURAL HISTORY**

Complaint 2005 - No. 8 was received by the Board on August 22, 2005 and was investigated by staff pursuant to RCW 42.52.420 and RCW 42.52.450. The Board determined it had both personal and subject-matter jurisdiction and discussed the results of the investigation at regularly scheduled Board meetings on September 15 and October 20, 2005.

**III. DETERMINATIONS OF FACT**

1. Representative Jim McCune's 2005 end-of-session newsletter was, according to the House of Representative's Production Tracking and Postage System, prepared and mailed at public expense. Total cost for 25,680 copies, including staff time, labels, paper and postage, was \$6,438.42. Representative McCune approved the final draft.
2. The newsletter discusses, among other things, two issues which House Republicans generally agreed to emphasize in their newsletters as illustrative of differences between them and House Democrats -- the biennial operating budget and the gas tax. Further, in referring to legislative efforts on election reform in the 2005 legislative session, Representative McCune expressed disappointment with those efforts and opined that the recent gubernatorial election involved several missteps "and left many of us with the unsettling conclusion that we don't know who **really** won – and we never will."
3. The Complaint alleges that the comment about the gubernatorial election, in addition to the statements about House Democrats, result in a newsletter less designed to inform and more designed to be a political tool.

4. Representative McCune was not a candidate for elective office in 2005.

#### IV. DETERMINATIONS OF LAW

1. *Even though Representative McCune was not within the last year of his term of office, and therefore not subject to the mailing restrictions of RCW 42.52.185, the newsletter is subject to the prohibition on the use of public resources to directly or indirectly assist the Representative in a campaign context, RCW 42.52.180.*

The Board has previously determined that legislative material which is exempt from the mailing restrictions during the last year of a legislator's term in office, RCW 42.52.185, could be a violation of the prohibition on assisting a campaign, depending upon timing, content, relevance and tone and tenor. Complaint 1996 - No. 10, Advisory Opinion 1996 - No. 2, and Advisory Opinions 1997 - 2, 7 and 12. See also Complaint 1996 - No. 2 where the Board concluded that legislative newsletters were part of the "normal and regular conduct" of the office of state legislator.

2. *Notwithstanding its partisan nature, the newsletter does not violate RCW 42.52.180.*

In Complaint 1996 - No. 3 it was alleged that a newsletter improperly included materials which were designed to directly or indirectly influence elections. Statements such as "Our Commitment to you," the "Republican Commitment To The People," and "Republicans cut bureaucracy" were alleged to be partisan statements beyond the "normal and regular conduct" exception to .180. We disagreed. The Board concluded it is normal and regular conduct for a state legislator to report to constituents the positions they intend to take on issues they will be addressing in the legislative session. "The members of the legislature are elected on a partisan basis. It is acceptable for them to express their positions on issues that they will be dealing with in the legislative session in partisan terms. In that manner, their constituents are kept informed of how they are being represented in the legislature" (at page 4).

Complaint 1996 - No. 7 accused a legislator of violating .180 because, in part, he used highly partisan language in his newsletter. In describing the just completed legislative session he addressed his readers by saying, for example: "These failures reflect the political extremism of Olympia these days. Our leaders seem more interested in making political statements rather than passing public policy . . . Both juvenile sentencing reform and welfare reform were achievable . . . But the Republican leadership was more concerned in making a political statement about punishment and family caps . . . *Hopefully in November, we will return to common sense*" (emphasis added). The Board cited Complaint 1996 - No. 3 as authority for dismissing the charge that the statements violated the Act because they were partisan.

Additionally, materials prepared at public expense on behalf of caucus members for use in partisan debate were determined to be proper as they were not prepared for or used in a campaign, Complaint 1996 - No. 8. Later, in Complaints 1998 Nos 4 and 5, the Board

determined that a legislative mailing which praised the accomplishments of the Republicans in the House, and criticized Democrats and the Governor, was "normal and regular conduct" and did not violate the Act because the mailing was about legislative issues.

## **V. CONCLUSION AND ORDER**

Based on a review of the Complaint and the Board's investigation, the Board concludes that Representative McCune's end-of-session newsletter expressed his opinion on a number of legislative issues debated in the just concluded legislative session.

There is no reasonable cause to believe the newsletter constituted a violation of RCW 42.52.180 and the Complaint is hereby dismissed.

Dated this 6<sup>th</sup> day of December, 2005.

James A. Andersen, Chair